

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JERRY R. HUDDLESTON

Appeal No. 2004-0176
Application No. 09/651,328

HEARD: MARCH 4, 2004

Before FRANKFORT, STAAB and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-15, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to game calls of the type used to attract animals while hunting and, in particular, to a forced-air game call which can be remotely operated (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Lamo	5,613,891	Mar. 25, 1997
Hall	5,975,978	Nov. 2, 1999
Bean	6,328,623	Dec. 11, 2001
		(filed Jun. 7, 1999)

The following rejections are before us for review.

Claims 1-4, 6-11 and 13-15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lamo in view of Hall.

Claims 5 and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lamo in view of Hall and Bean.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection and answer (Paper Nos. 6 and 9) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 8) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Each of appellant's independent claims 1 and 8 recites an apparatus comprising an air reservoir pneumatically coupled to a game call and an air tube having a proximal

end into which a user exhales or inhales and a distal end in pneumatic communication with the air reservoir. The term “reservoir” is defined on page 5 of appellant’s specification as meaning “any type of air-fillable bladder, bulb or other vessel, semi-flexible or substantially rigid, so long as a charge of air is retained sufficient [to] improve the sound of the apparatus as compared to the absence of such a reservoir.”

Lamo, the primary reference relied upon by the examiner in rejecting appellant’s claims, discloses a hands-free and mouth-free animal caller that can be foot operated comprising a bellows assembly 60 contained within a cloth pouch-like housing 20 for producing a strong current of air and a reed assembly 80 attached to the bellows assembly 60 for producing different sounds or calls. The bellows assembly includes a bellows housing 62 which further includes a loose synthetic fiber fill 70 located in the internal volumetric space 72 thereof which automatically expands after being compressed to allow air to be drawn into space 72 to expand the bellows housing 62 for a physical inflating of the bellows assembly 60. The bellows housing 62 can also have an external valve 74 on the outer surface area 76 thereof for partial inflation by air (column 4, lines 12-24). As illustrated in Figure 1, in using Lamo’s device, the user places his or her foot 14 on the outside top surface of the housing 20 such that the user’s foot lightly applies pressure onto the bellows assembly 60 forcing air through the connector tube 64 which in turn forces air through the sounding reed 90 with the sound of the animal call exiting through tubes 96 and 102 (column 5, lines 30-37). As explained in column 1, lines 12-46, Lamo’s animal caller permits the user to operate the

animal call with the user's foot, armpit or by leaning against the animal caller, without the need to remove hands from the bow, gun or camera to place the animal call in the mouth. Lamo lacks an air tube having a proximal end into which a user exhales or inhales and a distal end in pneumatic communication with the air reservoir, as recited in claims 1 and 8.

Hall discloses a push-button multi-pitch grunt deer call having a mouthpiece on the end of a tubular section which also houses the sound-producing reed assembly and an extendable sound projecting portion 24. Hall's deer call connects the mouthpiece directly to the animal call or sound producing portion (reed assembly) without an intervening air reservoir.¹

Bean discloses a game call comprising a bellows 102 connected directly to a reed/pitch control assembly 112 (the sound producing portion) including, inter alia, reed 204 and air tube 202 without any additional intervening air reservoir. In operation, the bellows 102 is depressed a first distance, thereby creating an airflow over reed 204 and through air tube 202 causing vibration of reed 204. The pitch of the call is controlled by the point of contact of detents with the reed 204, with the point of contact being adjusted with reed pitch adjusting screw 456. The bellows 102 is further depressed so as to engage top contact end 212 of reed plunger 210, which is caused to move, thereby flexing and forcing detent 216 out of contact with reed 204 so as to allow reed

¹ Notwithstanding the examiner's determination to the contrary on page 2 of the final rejection, the sound projecting portion 24 of Hall's deer call is not a "reservoir" as that term is used by appellant because it does not retain the air but, rather, simply permits it to pass directly therethrough.

204 to vibrate over a different length and thus produce a different pitch. The game call permits the user to call game using multiple pitch sounds without blowing through a mouthpiece (column 1, lines 9-10).

Lamo, Hall and Bean each disclose different means of supplying air to the sound producing portion of a game call. Lamo and Bean each connect a bellows (air reservoir) to the sound producing portion as a means of generating air flow, while Hall connects a mouthpiece to the sound producing portion as a means of supplying air flow to the sound producing portion. None of these references, either alone or in combination, teaches or suggests connecting an air tube to an air reservoir which is in turn connected to the sound producing portion as called for in appellant's claims 1 and 8. In fact, the connection of an air tube having a proximal end into which the user may exhale or inhale to the external valve 74 on Lamo's bellows housing 62 would appear to be at odds with Lamo's objective of providing a game call which can be operated without using the mouth. From our perspective, the only suggestion for putting the selected pieces from the references together in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellants' disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). It follows that we cannot sustain the examiner's rejections of independent claims 1 and 8, or claims 2-4, 6, 7, 9-11 and 13-15 depending therefrom, as being unpatentable over Lamo in view of Hall and claims 5 and 12 as being unpatentable over Lamo in view of Hall and Bean.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-15 under 35
U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT
Administrative Patent Judge

LAWRENCE J. STAAB
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

)
)
)
)
)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES
)
)
)
)
)

JDB/ki

Appeal No. 2004-0176
Application No. 09/651,328

Page 7

John G. Posa
Gifford, Krass, Groh et al.
280 N. Woodward Ave., Suite 400
Birmingham, MI 48009